# Damansara Realty Bhd v Bungsar Hill Holdings Sdn Bhd & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(IM)-3–01 OF 2015
ZAWAWI SALLEH, UMI KALTHUM AND VERNON ONG JJCA
6 APRIL 2018

*Land Law — Acquisition of land — Compensation — Land administrator paid compensation monies for compulsory acquisition of land into court pending resolution of dispute between land owner and an interested party over who was entitled to monies — Court later ordered deposited monies to be released to land owner — Whether court wrong to regard date granting order as 'judgment date' and to further order interested party to pay land owner pre-judgment and post-judgment interest on released monies — Whether Land Acquisition Act 1960 ('the LAA') did not give court power to award such interest — Whether accordingly court had no inherent power to award such interest — Whether only interest allowed under the LAA was 8% late payment charges payable by the land administrator in limited circumstances — Whether s 11 of the Civil Law Act 1956 did not apply to enable court to award interest as the matter before court was not for recovery of any debt or damages but for release of deposited monies — Whether interested party did not owe land owner any debt nor was there any cause of action or judgment against interested party in respect of compensation monies*

The first respondent ('R1') owned a piece of land in which the appellant claimed an interest through a lease agreement. When part of the land was compulsorily acquired for the construction of an expressway, a dispute arose between R1 and the appellant over who was entitled to the compensation monies and/or in what proportion. Due to the dispute, the second respondent, pursuant to s 29(2) of the Land Acquisition Act 1960 ('the LAA'), obtained a court order to deposit a compensation sum of RM6,856,597.50 plus RM802,503.68 as late payment charges at 8%pa into court. Later, an additional compensation sum of RM425,505 was deposited into court. Following the determination by the Federal Court in a separate proceeding that the appellant's rights over the land had been validly terminated by R1, the latter applied for an order that: (a) the deposits in court be released to it ('prayer 1'); and (b) the appellant pay it interest at 8%pa on the compensation monies ('prayer 2'). The senior assistant registrar ('SAR') of the High Court allowed prayer 1. Subsequently, the deputy registrar ('DR'), taking the date of the SAR's order as the 'judgment date', allowed prayer 2 but ordered the appellant to pay the respondent pre-judgment interest at 8%pa and post-judgment interest at 5%pa on the compensation monies. On hearing the appellant's appeal against

the DR's decision ordering it to pay interest, the judicial commissioner ('JC') ordered, inter alia, that: (i) pursuant to O 90 rr 6 and 7 of the Rules of Court 2012 and Circular 1/1998, the accountant-general should pay R1 interest at 2%pa on the total compensation monies that had been paid into court; and (ii) the appellant should pay R1 pre-judgment interest at 3%pa on a principal sum of RM6,856,597.80 and post-judgment interest at 5%pa on a principal-plus-interest sum of RM7,659,101.18. The appellant appealed to the Court of Appeal against the decision in (ii) above whilst R1 cross-appealed saying the pre-judgment interest awarded by the High Court should have been either 8% or 6%pa. At the hearing of the instant appeal, the appellant contended that the LAA only provided for the land administrator in certain given circumstances to pay late payment charges on compensation monies at the rate of 8%pa; that no power was given to the court to impose either pre-judgment or post-judgment interest on compensation monies and that too, against an interested person who was contesting a claimant's right to be paid the whole of the compensation monies in a land reference proceeding; and that the court could not grant the interest in the guise of exercising its inherent powers as it had no jurisdiction to make such orders in the first place.

**Held**, allowing the appeal, setting aside the relevant orders of the JC and dismissing the cross-appeals:

(1) The LAA did not confer any jurisdiction on the court to order pre-judgment or post-judgment interest or to order an interested person to pay interest. An order for the release of monies deposited into court was not a judgment and did not attract the award of pre-judgment or post-judgment interest (see paras 34 & 47).

(2) Sections 29A(5), 32(1) and (1B), and 48 of the LAA expressly specified 'late payment charges' at the rate of 8%pa that were to be paid by the land administrator for a specified period of time and nothing more. This necessarily meant the imposition of pre-judgment interest and post-judgment interest on an interested person in land acquisition cases was excluded (see para 37).

(3) The first respondent's reliance on the inherent powers of the court to claim for interest against the appellant was misplaced as the court could not exercise its inherent powers beyond or outside its jurisdiction or where it had no jurisdiction at all. The land reference court had no jurisdiction to award interest. As such, there was no inherent power in that context to begin with (see para 43).

(4) The proceedings before the High Court in the present case were not for the recovery of debts or damages but for the release of the compensation monies from the deposit accounts. The JC erred when he concluded that s 11 of the Civil Law Act 1956 ('the CLA') did not preclude interest being claimed in respect of a debt due from a party in circumstances where the

person from whom interest was being claimed was responsible for the delay in the discharge of the debt. The JC concluded that 'debt' included compensation monies that were due to be paid to a claimant in a land reference proceeding. The present appeal did not fall under the purview of s 11 of the CLA as there was no debt owing by the appellant to the first respondent; nor were there monies belonging to the first respondent that were being kept by the appellant. The monies were in the deposit accounts of the High Court and/or the land administrator. As such, there was no basis whatsoever for the appellant to bear the interest on the said monies (see paras 45–46).

(5) Section 11 of the CLA related to a 'cause of action' and a 'judgment'. There was neither any cause of action against the appellant nor any judgment against it in the proceedings before the High Court. The proceedings were only for the release of compensation monies from the deposit accounts. The appellant was not adjudged liable to pay the compensation monies. Thus s 11 of the CLA could not be relied upon by the first respondent to seek an award of interest against the appellant (see para 46).

(6) Item 7 of the Schedule to the Courts of Judicature Act 1964 ('the CJA'), in respect of interest, was of no assistance to the first respondent. Item 7 read together with s 25(2) of the CJA clearly showed that Item 7 was only to be exercised in accordance with any written law or rules of court. In the present case, the relevant written law was the LAA which clearly provided that late payment charges were to be paid by the land administrator (see paras 41–42).

**[Bahasa Malaysia summary**

Responden ('R1') memiliki sebidang tanah di mana perayu menuntut faedah melalui perjanjian pajak. Apabila sebahagian tanah diambil alih secara wajib untuk pembinaan lebuh raya, pertikaian berbangkit di antara R1 dan perayu mengenai siapa yang berhak kepada wang pampasan dan/atau dalam apa bahagian. Akibat pertikaian tersebut, responden kedua, berikutan kepada s 29(2) Akta Pengambilan Tanah 1960 ('APT'), memperolehi perintah mahkamah untuk mendepositkan sejumlah wang pampasan sebanyak RM6,856,597.50 tambah RM802,503.68 sebagai caj bayaran lewat pada 8% setahun kepada mahkamah. Berikutan penentuan oleh Mahkamah Persekutuan dalam prosiding berlainan bahawa hak perayu ke atas tanah tersebut telah ditamatkan secara sah oleh R1, R1 kemudiannya memohon bagi perintah bahawa: (a) deposit-deposit di mahkamah dibayar kepadanya ('permohonan 1'); dan (b) perayu membayarnya faedah pada 8% setahun atas wang pampasan tersebut ('permohonan 2'). Penolong kanan pendaftar ('PKP') Mahkamah Tinggi membenarkan permohonan 1. Kemudiannya, timbalan pendaftar ('TP'), mengambil tarikh perintah PKP sebagai 'judgment date', membenarkan permohonan 2 tetapi memerintah perayu untuk membayar

responden faedah pra penghakiman pada 8% setahun dan faedah selepas penghakiman pada 5% setahun ke atas wang pampasan. Dalam mendengar rayuan perayu terhadap keputusan TP yang memerintahnya untuk membayar faedah, pesuruhjaya kehakiman ('PK') memerintah, antara lain, bahawa: (i) berikutan A 90 kk 6 dan 7 Kaedah-Kaedah Mahkamah 2012 dan Pekeliling 1/1998, Peguam Negara patut membayar R1 faedah pada 2% setahun atas jumlah keseluruhan wang pampasan yang telah dibayar kepada mahkamah; dan (ii) perayu patut membayar R1 faedah pra penghakiman pada 3% setahun atas jumlah utama sebanyak RM6,856,597.80 dan faedah selepas penghakiman pada 5% setahun atas jumlah utama-tambah-faedah sebanyak RM7,659,101.18. Perayu merayu kepada Mahkamah Rayuan terhadap keputusan dalam (ii) di atas sementara R1 merayu balas dengan menyatakan faedah pra penghakiman yang diawardkan oleh Mahkamah Tinggi sepatutnya sebanyak 8% atau 6% setahun. Pada pendengaran rayuan ini, perayu berhujah bahawa APT hanya memperuntukkan bagi pentadbir tanah dalam keadaan tertentu untuk membayar caj bayaran lewat atas wang pampasan pada kadar 8% setahun; bahawa tiada kuasa diberikan kepada mahkamah untuk mengenakan faedah pra penghakiman atau selepas penghakiman ke atas wang pampasan dan bahawa ia juga, terhadap orang yang berkepentingan yang membangkang hak penuntut untuk dibayar keseluruhan wang dalam prosiding rujukan tanah; dan bahawa mahkamah tidak boleh memberikan faedah dalam samaran menjalankan kuasa inherensnya kerana ia tidak mempunyai bidang kuasa untuk membuat perintah sedemikian pada mulanya.

**Diputuskan**, membenarkan rayuan, mengenepikan perintah-perintah relevan PK dan menolak rayuan balas:

(1) APT tidak memberikan apa-apa bidang kuasa ke atas mahkamah untuk memerintah daedah pra penghakiman dan selepas penghakiman atau untuk memerintah orang yang berkepentingan untuk membayar faedah. Perintah untuk pelepasan wang yang didepositkan kepada mahkamah bukan penghakiman dan tidak membangkitkan award faedah pra penghakiman atau selepas penghakiman (lihat perenggan 34 & 47).

(2) Seksyens 29A(5), 32(1) dan (1B), dan 48 APT dengan jelas menyatakan 'late payment charges' pada kadar 8% setahun yang kena dibayar oleh pentadbir tanah bagi tempoh masa yang ditentukan dan tidak lebih. Ini bermaksud pengenaan faedah pra penghakiman dan faedah selepas penghakiman ke atas orang yang berkepentingan dalam kes-kes pengambilan tanah adalah dikecualikan (lihat perenggan 37).

(3) Penggantungan responden pertama ke atas kuasa inherens mahkamah untuk menuntut faedah terhadap perayu adalah salah kerana mahkamah tidak dapat menjalankan kuasa inherensnya melampaui atau di luar bidang kuasanya atau di mana ia tidak langsung mempunyai bidang kuasa. Mahkamah rujukan tanah tidak mempunyai bidang kuasa untuk

mengaward faedah. Dengan demikian, tidak terdapat kuasa inherens dalam konteks tersebut pada mulanya (lihat perenggan 43).

(4) Prosiding di hadapan Mahkamah Tinggi dalam kes ini bukan untuk mendapatkan semula hutang atau ganti rugi tetapi untuk melepaskan wang pampasan daripada akaun deposit. PK tersilap apabila beliau memutuskan bahawa s 11 Akta Undang-Undang Sivil 1956 ('AUS') tidak menghalang faedah dituntut berkaitan hutang yang kena dibayar daripada pihak dalam keadaan di mana orang yang mana faedah dituntut adalah bertanggungjawab untuk kelewatan dalam melepaskan hutang. PK memutuskan bahawa 'debt' termasuk wang pampasan yang kena dibayar kepada penuntut di dalam prosiding rujukan tanah. Rayuan ini tidak terangkum di bawah skop s 11 AUS memandangkan tidak terdapat hutang yang kena dibayar oleh perayu kepada responden pertama; juga tidak terdapat wang yang dimiliki oleh responden pertama disimpan oleh perayu. Wang berada di dalam akaun deposit Mahkamah Tinggi dan/atau pentadbir tanah. Dengan itu, tidak terdapat asas apapun untuk perayu menanggung faedah ke atas wang tersebut (lihat perenggan 45–46).

(5) Seksyen 11 AUS berkaitan kepada 'cause of action' dan 'judgment'. Tidak terdapat sama ada apa-apa kausa tindakan terhadap perayu atau pun apa-apa penghakiman terhadapnya di dalam prosiding di hadapan Mahkamah Tinggi. Prosiding hanya untuk melepaskan wang pampasan daripada akaun deposit. Perayu tidak dihukumkan bertanggungjawab untuk membayar wang pampasan. Oleh itu s 11 AUS tidak boleh digunapakai oleh responden pertama untuk memohon faedah terhadap perayu (lihat perenggan 46).

(6) Perkara 7 Jadual kepada Akta Mahkamah Kehakiman 1964 ('AMK'), berkaitan faedah, tidak membantu responden pertama. Perkara 7 dibaca bersama dengan s 25(2) AMK jelas menunjukkan bahawa perkara 7 hanya boleh dilaksanakan mengikut mana-mana undang-undang bertulis atau kaedah-kaedah mahkamah. Dalam kes ini, undang-undang bertulis relevan adalah APT yang jelas memperuntukkan bahawa caj-caj bayaran lambat adalah hendak dibayar oleh pentadbir tanah (lihat perenggan 41–42).]

**Notes**

For cases on compensation on acquisition of land, see 8(2) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 2345–2404.

**Cases referred to**

*Amalan Tepat Sdn Bhd v Panflex Sdn Bhd* [2012] 2 MLJ 168, FC (refd)

*Damansara Realty Bhd v Bungsar Hill Holdings Sdn Bhd & Anor* [2011] 6 MLJ 464, FC (refd)

A *Fraser (DR) & Co v Minister of National Revenue* [1949] AC 24, PC (refd)
*Karpal Singh & Anor v PP* [1991] 2 MLJ 544, SC (refd)
*Newall v Tunstall* [1971] 1 WLR 105 (refd)
*Parkson Corp Sdn Bhd v Fazaruddin bin Ibrahim (t/a Perniagaan Fatama) and another appeal* [2011] 2 MLJ 46; [2002] 4 AMR 3951, CA (refd)
B *Pasmore v Oswaldtwistle Urban District Council* [1898] AC 387, HL (refd)
*Wilkinson v Barking Corpn* [1948] 1 KB 721, CA (refd)

**Legislation referred to**

C Civil Law Act 1956 s 11
Courts of Judicature Act 1964 ss 25, 25(2), Schedule, Item 7
Land Acquisition Act 1960 ss 29(2), 29A, 29A(5), 32, 32(1), (1B), 37, 48
Rules of Court 2012 O 90 rr 6, 7

D **Appeal from:** Originating Summons No S3(S1)-21–90 of 2001 (High Court, Kuala Lumpur)

*Richard WG Lee (Teh Eng Lay and Ong Ing Hoo with him) (Richard Lee) for the appellant.*
E *Tommy Thomas (Alan Adrian Gomez and Anita Natalia with him) (Tommy Thomas) for the first respondent.*
*Narkunavathy Sundareson (Attorney General's Chambers) for the second respondent.*

F **Umi Kalthum JCA (delivering judgment of the court):**

INTRODUCTION

G **[1]** This was an appeal by Damansara Realty Bhd ('Damansara Realty/the appellant') and the cross-appeals by Bungsar Hill Holdings Sdn Bhd ('Bungsar Hill/the first respondent') against the decision of the learned judicial commissioner ('JC') (as he then was).

H **[2]** The appeal arose from an appeal to the judge in chambers against the decision of the deputy registrar ('DR') of the High Court who awarded pre-judgment interest of 8%pa and post-judgment interest of 5%pa on sums deposited into court in respect of a land reference matter.

I **[3]** For the purpose of this appeal, parties will be referred to as they were at the High Court.

BACKGROUND FACTS

**[4]** Bungsar Hill is the registered proprietor of a piece of land in Damansara, Kuala Lumpur. Part of the land was compulsorily acquired for the construction of the SPRINT Expressway sometime in December 2000.

**[5]** Damansara Realty had in May 2001 applied to the respondent/second respondent/the Land Administrator Federal Territory of Kuala Lumpur ('the land administrator') claiming an interest in the land through a lease agreement.

**[6]** There was a dispute between Damansara Realty and Bungsar Hill as to which party was entitled to the acquisition compensation as well as over the apportionment of the compensation.

**[7]** The land administrator, pursuant to s 29(2) of the Land Acquisition Act 1960 ('the LAA'), had on 28 June 2001 filed an application vide Kuala Lumpur ex parte Originating Summons No S3–21–90 of 2001 ('S3 action') and on 7 November 2001, the court ordered that 75% of the compensation amount for the entire acquired land together with the 8% late payment charges be deposited in the High Court. The land administrator deposited in the High Court the said 75% of the compensation amounting to RM6,856,597.50 together with the 8% late payment charges of RM802,503.68, totalling RM7,659,101.18.

**[8]** A land reference proceeding was then initiated vide Kuala Lumpur High Court Land Reference No S4–15–13 of 2003 ('S4 action') with Damansara Realty, Bungsar Hill and Sistem Penyuraian Trafik KL Barat Sdn Bhd ('SPRINT') as the applicants and the land administrator as the respondent. Subsequently, the parties resolved the issue of the compensation amount vide a consent order dated 22 November 2007 ('consent order'). One of the terms of the consent order stipulated that a further compensation amount of RM425,505 was to be paid and deposited in the High Court. The said sum was deposited on 17 January 2008. The consent order had also stipulated that there 'be no order as to costs and interest'.

**[9]** As such, the remaining issue between Damansara Realty and Bungsar Hill was to whom the deposits were payable and the apportionment of the said deposits.

**[10]** Subsequently, the above mentioned issue became academic when the Federal Court, in another set of proceedings involving a contractual dispute between Damansara Realty and Bungsar Hill held that Damansara Realty's rights over the land concerned were validly terminated by Bungsar Hill (see

*Damansara Realty Bhd v Bungsar Hill Holdings Sdn Bhd & Anor* [2011] 6 MLJ 464).

**[11]** However, on 11 March 2013, Bungsar Hill filed a notice of application in the S3 action and the S4 action respectively. These applications were premised on s 37 of the LAA, praying for the following orders:

(a) the deposits be released to the Bungsar Hill ('prayer (1)');

(b) Damansara Realty pays Bungsar Hill interest at 8%pa ('prayer (2)') on:

(i) the said sum of RM6,856,597.50 deposited in court under the S3 action beginning from 8 July 2002 to date of realisation; and

(ii) the said sum of RM425,505 deposited in court pursuant to the consent order in the S4 action beginning from 22 November 2007 to date of realisation; and

(c) Damansara Realty pays Bungsar Hill costs of the proceedings and/or of the applications ('prayer (3)').

**[12]** The learned senior assistant registrar of the Kuala Lumpur High Court had on 30 April 2013 allowed prayer 1 and accordingly ordered the said deposits to be released to Bungsar Hill.

**[13]** Then, on 23 September 2013, the learned DR of the Kuala Lumpur High Court allowed prayer 2 and ordered, in respect of S3 action, that Damansara Realty pay Bungsar Hill pre-judgment interest at the rate of 8%pa on the sum of RM6,856,597.50 from 8 July 2002–30 April 2013 and post-judgment interest at the rate of 5%pa on the said sum of RM6,856,597.50 from 1 May 2013 until the date of payment of the said sum of RM6,856,597.50 to Bungsar Hill.

**[14]** Meanwhile, in respect of the S4 action, the learned DR ordered Damansara Realty to pay Bungsar Hill pre-judgment interest at the rate of 8%pa on the sum of RM425,505 from 22 November 2007–30 April 2013 and post-judgment interest at the rate of 5%pa on the said sum of RM425,505 from 1 May 2013 until the date of payment of the said sum of RM425,505 to Bungsar Hill.

**[15]** On 7 February 2014, the learned DR made orders in respect of prayer 3 regarding costs, whereby Damansara Realty was to pay costs to Bungsar Hill for the respective applications in the amount of RM2,500 in respect of the S3 action and S4 action, but Bungsar Hill's application for costs of the S3 and S4 proceedings was dismissed.

**[16]** Vide notice of appeal to the judge in chambers, Damansara Realty appealed against the learned DR's decision on interest and Bungsar Hill appealed against the learned DR's decision on costs.

AT THE HIGH COURT

**[17]** The learned JC, heard the said appeals and made the following orders in respect of the appeal in S3 action:

(a) Bungsar Hill be paid interest on the sum of RM7,659,101.18 at the rate of 2%pa by the accountant general pursuant to and in accordance with O 90 rr 6 and 7 of the Rules of Court 2012 ('the ROC') and Circular 1/1998 from 1 August 2002–30 September 2013;

(b) Damansara Realty pays to Bungsar Hill:

(i) pre-judgment interest at a rate of 3%pa on the principal sum of RM6,856,597.80 from 10 July 2002–30 April 2013;

(ii) post-judgment interest at a rate of 5%pa on the sum of RM7,659,101.18 from 1 May 2013–21 October 2013; and

(iii) costs of RM40,000.

**[18]** Meanwhile, in respect of S4 action, the learned JC ordered the following:

(a) Bungsar Hill be paid interest on the sum of RM425,505 at a rate of 2%pa by the accountant general pursuant to and in accordance with O 90 rr 6 and 7 of the ROC and Circular 1/1998 from 1 February 2008–30 September 2013; and

(b) that there be no order as to interest or costs to Damansara Realty.

**[19]** The learned JC found that the High Court does indeed have the jurisdiction to award both pre-judgment and post-judgment interests in respect of a compensation sum awarded under the LAA.

**[20]** The learned JC also found that it is the court's discretion to award interest on sums paid into court by the land administrator against a co-claimant in a land reference proceeding, notwithstanding that the co-claimant did not have the use of the money for the relevant period.

**[21]** The learned JC also found that on a proper construction of the consent order in the S4 action, the term of the order on costs and interest precludes Bungsar Hill from claiming costs and interest in that action.

A **[22]** With reference to O 90 r 6 of the ROC, the learned JC found that since there was a delay on the part of the Bungsar Hill in applying for the release of the compensation sums immediately after the decision of the Federal Court on 11 October 2011, Damansara Realty ought not be made liable for pre-judgment interest for the period between 12 October 2011–11 March 2013.

**[23]** The learned JC also supplemented the orders of the learned senior assistant registrar by ordering that interest at a rate of 2%pa be paid to Bungsar Hill in respect of the sums deposited into court in the S3 action and the S4 action.

**[24]** Aggrieved by the decision of the learned JC, both Damansara Realty and Bungsar Hill filed their notice of appeal and the notice of cross appeal respectively against that decision.

**[25]** Damansara Realty, in respect of S3 action only, appealed against part of the decision that ordered Damansara Realty to pay Bungsar Hill: (i) pre-judgment interest at the rate of 3%pa on the principal sum of RM6,856,597.80 from 10 July 2002–30 April 2013; (ii) post-judgment interest at a rate of 5%pa on the sum of RM7,659,101.18 from 1 May 2013–21 October 2013; and (iii) costs of RM40,000.

**[26]** Bungsar Hill's notice of cross appeal, in respect of S3 action, was on the percentage the pre-judgment interest payable to Bungsar Hill by Damansara Realty to be at the rate of 8%pa or in the alternative at the rate of 6%pa on the sum of RM7,659,101.18 deposited into court. Bungsar Hill's notice of cross appeal was, in respect of S4 action, on the percentage the pre-judgment interest payable to Bungsar Hill by Damansara Realty to be at the rate of 8%pa or in the alternative to be at the rate of 6%pa on the sum of RM425,505 deposited into court; post-judgment interest at the rate of 5%pa; and costs of Bungsar Hill's application in encl 39 and its appeal in encl 49.

H THE APPEAL

**[27]** The crux of this appeal is whether the High Court sitting as the land reference court under the LAA has the jurisdiction and the power to:

I (a) award interest on the land acquisition compensation and on the 8% late payment charges both deposited into court by the land administrator; and

(b) order a co-applicant to pay to another co-applicant such interest.

**[28]** It was Damansara Realty's contention that the LAA does not confer any jurisdiction on the court to order the imposition of either pre-judgment interest or post-judgment interest on the sums deposited into the court. The LAA also does not provide for an interested person to pay interest.

**[29]** Reference was made to ss 29A(5), 32(1) and (1B) and 48 of the LAA where these provisions clearly spell out in express terms late payment charges are to be paid by the land administrator.

**[30]** Damansara Realty contended that any other form of remedy such as pre-judgment and post-judgment interests as sought by Bungsar Hill are not available in land acquisition cases.

**[31]** In addition, Damansara Realty pointed out that the specified rate of 8%pa for a specified period of time for late payment charges in ss 29A(5), 32(1) and (1B) and 48 of the LAA implied the exclusion from land acquisition cases any imposition of pre-judgment interest and post-judgment interest on an interested person.

**[32]** Damansara Realty further contended that Item 7 of the Schedule to the Courts of Judicature Act 1964 ('the CJA'), in respect of interest, does not assist Bungsar Hill in claiming for the pre-judgment and post-judgment interests. Section 25 of the CJA provides that those additional powers given to the courts, including the said Item 7, are only to be exercised in accordance with any written law or rules of court. In this appeal, the relevant written law is the LAA which only specifies for late payment charges to be paid by the land administrator whilst the relevant rules of court can be found in O 90 rr 6 and 7 of the ROC read together with Circular 1/1998 both of which only provide for interest to be paid by the minister of finance/accountant general.

**[33]** Damansara Realty also contended that Bungsar Hill's reliance on the court's inherent powers was misplaced as the inherent powers cannot be used to make orders which are outside the ambit of the LAA.

DECISION OF THE COURT

**[34]** We agreed with the submissions of the learned counsel for Damansara Realty that the LAA does not confer any jurisdiction on the court to order the imposition of pre-judgment and post-judgment interests and for an interested person under the LAA to pay interest.

**[35]** We refer to the Court of Appeal case of *Parkson Corp Sdn Bhd v Fazaruddin bin Ibrahim (t/a Perniagaan Fatama) and another appeal* [2011] 2 MLJ 46; [2002] 4 AMR 3951 where this court, per Gopal Sri Ram JCA (as he

then was), had referred to the cases of *Pasmore v Oswaldtwistle Urban District Council* [1898] AC 387 and *Wilkinson v Barking Corpn* [1948] 1 KB 721 for the principles of statutory interpretation as follows:

> The present case accordingly falls to be covered by the established principle, which deals with the consequences of Parliament providing novel or new remedy. The principle is ancient. It has been adverted to in numerous cases. We do not propose to go through them all here. Suffice that we mention the seminal cases. Of these the first is *Pasmore v Oswaldtwistle Urban District Council* [1898] AC 387, where (at p 394) the Earl of Halsbury LC said:
>
> > The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy or any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law.
>
> The second is *Wilkinson v Barking Corpn* [1948] 1 KB 721, where at p 724, we find Asquith LJ saying this:
>
> > It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others.

**[36]** Justice Gopal Sri Ram elaborated further in the same case at p 3961, lines 1–7,as follows:

> If Parliament had wished to confer jurisdiction upon a court making an order under s 16 to also award damages, it would had said so expressly. It is therefore plain what Parliament intended was to only criminally punish the infringer of merchandising marks and the perpetrator of any other act or omission specifically proscribed by the Act. We therefore, with as much respect as we can gather, reject the principle submission made by En Shaari Nor about the way in which s 16 should be construed.

**[37]** Applying those principles of statutory interpretation to this appeal, we found that ss 29A(5), 32(1) and (1B) and 48 of the LAA expressly specify 'late payment charges' at the rate of 8%pa for a specified period of time and nothing more. This would necessarily mean that the imposition of pre-judgment interest and post-judgment interest on an interested person in land acquisition cases are excluded. For ease of reference we reproduce ss 29A, 32 and 48 of the LAA as follows:

> 29A Withholding of twenty-five per cent of compensation
>
> (1) Where the total amount of any award in respect of any scheduled land exceeds fifteen thousand ringgit, then, notwithstanding section 29, the Land Administrator shall, subject to subsection (2), make payment of only seventy-five per cent of the amount of the award, and shall withhold twenty-five per cent thereof until the amount of compensation is finally

determined either by the Court under section 47 or, if there is an appeal or further appeal pursuant to section 49, on the appeal or further appeal, under the following circumstances —

(a) before the expiry of six weeks from the date of service of Form H on the Government, person or corporation on whose behalf such land was acquired; or

(b) if before the expiry of the said period such Government, person or corporation has made an objection under section 37 to the amount of compensation or any other objection which may affect such amount.

(2) If within the period specified in paragraph (1)(a) no such objection as is referred to in paragraph (b) of that subsection is made, then, as soon as may be after the expiry of that period, the Land Administrator shall make to the person entitled thereto payment of the amount withheld under paragraph (a) of that subsection.

(3) If such final determination results in a reduction of the amount of compensation, the amount withheld or so much thereof as equals the amount of the reduction, as the case may be, shall become free of all claims in respect of the compensation, and the remainder, if any, shall, as soon as may be, be paid to the person entitled thereto.

(4) If such final determination does not result in a reduction of the amount of compensation, the amount withheld shall, as soon as may be, be paid to the person entitled thereto.

(5) The Land Administrator shall pay on every amount paid under subsection (3) or (4) *late payment charges at the rate of eight per cent per annum* from the time of payment of seventy-five per cent of the amount of the award until the time of payment of the first-mentioned amount.

32 Late payment charges

(1) When the amount of any compensation awarded under this Act in respect of any land is not paid or deposited on or before the due date, the Land Administrator shall pay the amount awarded with *late payment charges thereon at the rate of eight per cent per annum* from the *due date* until the time of such payment or deposit.

(1A) In its application to an award the payment of which is subject to section 29A, subsection (1) shall be construed as if the reference therein to the amount awarded were a reference to seventy-five per cent of the amount awarded.

(1B) Where, in the case of an award the payment of which is subject to subsection 29A(1), seventy-five per cent of the amount of the award is not paid or deposited on or before the *due date* in relation to the land in respect of which the award is made, the Land Administrator shall pay on the amount paid under subsection (3) or (4) of that section *late payment charges at the rate of eight per cent per annum*

A from the *due date* until the time of payment or deposit of seventy-five per cent of the amount of the award.

(1C) In this section '*due date*' in relation to any land means the date of taking possession of the land or a date three months after the service of a notice under subsection 16(1) in respect of the land, whichever is the earlier.

B

(2) Where any valuation is made under section 28 relating to any difference in area found on final survey, there shall be added to the amount of such valuation late payment charges thereon at the rate of eight per cent per annum from the date at which possession was taken or compensation paid, whichever shall have been the earlier; and the Land Administrator shall, as the case may require, either pay any such amount and late payment charges to the person interested, or obtain from him a refund thereof.

C

D 48 Land Administrator may be required to pay late payment charges

If the sum which in the opinion of the Court the Land Administrator ought to have awarded as compensation is in excess of the sum which the Land Administrator did award as compensation, the award of the Court may direct that the Land Administrator Land shall pay *late payment charges on such excess at the rate of eight per cent per annum* from the date on which the Land Administrator took possession of the land to the date of payment of such excess to the Court or to the person interested. (Emphasis added.)

E

**[38]** Moreover, it must be noted here that the imposition of interest had, vide legislation, been intentionally excluded from the land acquisition scheme in Malaysia. The Land Acquisition (Amendment) Act 1997 ('Act A999'), which came into force on 1 March 1998 (PU(B) 94/1998), had by ss 16, 17 and 26 specifically amended the LAA by substituting the words 'late payment charges' for the word 'interest' appearing in ss 29A(5), 32 and 48 of the LAA.

F

G

**[39]** Thus, when an amending act alters the language of the principal statute, the alteration must be taken to have been made deliberately (see *Fraser (DR) & Co v Minister of National Revenue* [1949] AC 24). We, therefore, with respect, found the learned JC had, in para 21 of his grounds of judgment, erred in holding that 'the principle enunciated in *Parkson Corp Sdn Bhd v Fazaruddin Ibrahim* would not apply in the case of the LAA to preclude a party to claim interest on a compensation sum, even though such interest had not been specifically provided for in the LAA'.

H

I

**[40]** With respect, we were also of the view that the learned JC had erred when he ruled that the interest payable under O 90 r 6 of the ROC accrued as of right to the beneficiary of the sum deposited into court and the right of Bungsar Hill to the 2% interest per annum remains unaffected by the consent order in the S4 action.

**[41]** Item 7 of the Schedule to the CJA, in respect of interest, read together with s 25(2) of the CJA, clearly shows that Item 7 is only to be exercised in accordance with any written law or rules of court. The same are reproduced herewith:

SCHEDULE

(Section 25(2))

7 Interest.

Power to direct interest to be paid on debts, including judgment debts, or on sums found due on taking accounts between the parties, or on sums found due and unpaid by receivers or other persons liable to account to the court.

25 Powers of the High Court.

(1) Without prejudice to the generality of Article 121 of the Constitution the High Court shall in the exercise of its jurisdiction have all the powers which were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction.

(2) Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:

*Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.* (Emphasis added.)

**[42]** In this present appeal, the relevant written law is the LAA and the LAA has clearly provided that late payment charges are to be paid by the land administrator.

**[43]** In addition to that, Bungsar Hill's reliance on the inherent powers of the court on its claim for interest was misplaced as the court cannot exercise its inherent powers beyond or outside the court's jurisdiction or where the court has no jurisdiction. In this appeal, the land reference court does not have the jurisdiction to award interest and as such, there was no inherent power in that context to begin with. We refer to the Federal Court case of *Amalan Tepat Sdn Bhd v Panflex Sdn Bhd* [2012] 2 MLJ 168 where Mohd Ghazali FCJ (as he then was) at para [44], p 185, held as follows:

... We are also of the view that inherent powers of this court do not confer or constitute a source of jurisdiction. We would iterate that this court must not do anything unconstitutional ...

**[44]** In the Supreme Court case of *Karpal Singh & Anor v Public Prosecutor* [1991] 2 MLJ 544, Abdul Hamid Omar LP (as he then was) at p 549, para E left, held as follows:

... The inherent power apparently cannot be invoked to override an express provision of law or when there is another remedy available. Where the legislature has

provided a particular mode of action or has vested an authority with powers to act in a particular manner and has prescribed the conditions limiting the scope of such action, the court cannot act outside those powers and conditions.

**[45]** It is also germane to note that the S3 and S4 actions were proceedings initiated under the LAA. Both S3 and S4 actions were not proceedings for the recovery of debts or damages. Thus, with respect, the learned JC had erred in law when he concluded that s 11 of the Civil Law Act 1956 ('the CLA') did not preclude interest being claimed in respect of a debt due from a party in circumstances where the person from whom interest is being claimed was responsible for the delay in the discharge of the debt. By referring to the *Oxford English Dictionary* on the meaning of 'debt', the learned JC concluded that 'debt' shall include the compensation due to be paid to a claimant in a land reference proceeding. We found that the present appeal did not fall under the purview of s 11 of the CLA as there was no debt owing by Damansara Realty to Bungsar Hill nor were there monies belonging to Bungsar Hill being kept by Damansara Realty. The monies were in the deposit accounts of the High Court and/or the land administrator. As such, there was no basis whatsoever for Damansara Realty to bear the interest on the said monies.

**[46]** Further, s 11 of the CLA relates to a 'cause of action' and a 'judgment'. There was no cause of action as against Damansara Realty nor any judgment against the same in both the S3 and S4 actions. Instead the S3 and S4 actions were in respect of the release of compensation monies from the deposit accounts. Damansara Realty was not adjudged liable to pay the compensation monies. Thus, s 11 of the CLA could not to be relied upon by Bungsar Hill in its attempt to seek an award of interest against Damansara Realty.

**[47]** It is also settled law that an order for the release of monies deposited into court is not a judgment and does not attract the award of pre-judgment or post judgment interest (see: *Newall v Tunstall* [1971] 1 WLR 105).

*Cross-appeals*

**[48]** As the cross appeal in regard to the S3 action raised similar issues as the appeal by Damansara Realty, we did not see the need to address said cross appeal specifically. We noted that in respect of the cross appeal in the S4 action, Bungsar Hill had eventually decided not to pursue with the matter.

## CONCLUSION

**[49]** Based on the aforementioned reasons, we unanimously allowed Damansara Realty's appeal in respect of the S3 action with costs. The High Court order dated 2 December 2014 at para (B)(i), (ii) and (iii) was set aside.

We also unanimously dismissed the cross-appeals in respect of the S3 and S4 actions with costs of RM70,000 for here and below to be paid by Bungsar Hill to Damansara Realty. No costs were awarded against the second respondent. We also ordered the deposit to be refunded.

*Appeal allowed; cross-appeals dismissed.*

Reported by Ashok Kumar